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September 14, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 25, 2007

Case Number: TSO-0494

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") for access authorization.<sup>1</sup> The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual should be granted access authorization. As discussed below, I find that access authorization should not be granted in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created a substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the notification letter included a statement of the derogatory information causing the security concerns.

The letter cited the following security concerns. In a report dated December 8, 2006, a DOE consultant psychologist diagnosed the individual as suffering from alcohol disorder not otherwise specified. The letter further noted that the individual has been

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<sup>1</sup>/ Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

arrested on two occasions for driving under the influence of alcohol (DUI). The letter cited as the most recent occurrence an arrest that took place on March 6, 2006. This represents a concern under 10 C.F.R. § 710.8(j)(Criterion J), which relates to alcohol abuse, dependence or habitual use to excess. The DOE consultant psychologist also believed that the individual's habitual use of alcohol to excess is a mental condition that causes or may cause a significant defect in judgment or reliability, thereby creating a security concern under Section 710.8(h)(Criterion H).

The notification letter further indicates the following concerns. On a December 4, 2004 Questionnaire for National Security Positions (QNSP), in a July 12, 2006 Personnel Security Interview (PSI), and in a November 2006 psychological evaluation with the DOE consultant psychologist, the individual indicated that during the period 1998-2002, he used cocaine 4-6 times and crack cocaine once. However, drug treatment records from a rehabilitation and detox facility where he had been admitted stated that he reported using cocaine daily in 2001. Further, in the 2004 QNSP, the individual stated that he had not participated in any alcohol or drug-related treatment. However, records of that same detox facility show that he was admitted from June 30 to July 1, 2001.

Further, during the July 12, 2006 PSI, the individual stated that from 1994 to the present he typically drank one drink over a two-hour period. However, during the November 2006 psychological evaluation, he stated that he typically drank six beers. According to the notification letter, these contradictory remarks and falsehoods in the QNSP, PSI and psychological examination give rise to a security concern under 10 C.F.R. § 710.8(f)(Criterion F).

The notification letter also states that the individual's use of cocaine gives rise to a security concern under 10 C.F.R. § 710.8(k)(Criterion K). Finally, the letter cites numerous arrests and citations involving motor vehicle violations during the period 1994 through 2006 and additional arrests for assault and possession of cocaine in 1998 and 1999. These incidents give rise to a security concern under 10 C.F.R. § 710.8(l)(Criterion L), which pertains to reliability and trustworthiness.

The notification letter informed the individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual testified on his own behalf, and presented the testimony of his wife, his supervisor, two friends from his church, and an intern from a local university. The DOE Counsel presented the testimony of the DOE consultant psychologist.

## II. Hearing Testimony

### A. The Individual

With respect to his alcohol use, the individual testified that he has reduced his use of alcohol over the years, and that his schedule is too busy now for him to spend considerable time drinking alcohol. He testified that the 2006 DUI incident was isolated, a mistake that took place in his wife's absence. Transcript of Hearing (Tr.) at 61-62. He does not believe that he currently has any problems with his alcohol use, or that he is an abuser of alcohol. Tr. at 64. His alcohol use has diminished over the years, and he believes that he can now use it responsibly. Tr. at 67. He testified that in April 2007 he decided to give up alcohol completely because, even though he does not have a problem currently, he and his wife will soon have a child, and also because he took the report of the DOE consultant psychologist seriously. Tr. at 68-69.

With respect to his use of illegal drugs, the individual testified that he no longer uses them. Tr. at 89.

The individual also discussed his false statements and omissions. He testified about his statement on the December 2004 QNSP that he had not had any treatment in the previous seven years concerning a mental health related condition. In this regard, the individual testified that he was admitted on June 30, 2001, to a "rehabilitation and detox" facility. However, he stated that he only stayed one night and left of his own volition the next morning. The individual explained that he never received any treatment at the facility and never saw a physician. He testified that he checked himself into the facility merely to get away from his (now-former) wife, and to get a good night's sleep. Tr. at 54.

He also discussed his statements in his July 2006 personnel security interview and to the DOE consultant psychologist that during the period 1998 through 2002 he used cocaine four to six times and crack cocaine once, whereas the detox facility intake sheet indicated that he used cocaine daily in 2001. The individual stated that he falsified and overstated his cocaine use to the detox facility in order to be admitted for the night. Tr. at 73. For these same reasons he lied to the facility about his alcohol use, telling them he used alcohol daily, whereas he stated in the PSI that he had one

drink over a two-hour period during a football game, and told the DOE consultant psychologist that he drank only six beers during a football game. Tr. at 77, 78.

The individual also testified about his recent efforts to be evaluated concerning his overall alcohol use. He stated that he was unable to schedule an appointment for an interview with a local psychologist or psychiatrist prior to the hearing. Accordingly, he decided to proceed directly to a facility that provides treatment for alcohol abusers. Tr. at 60. He indicated that he told the staff that he wanted to enroll in the alcohol use outpatient program, and that he was asked a series of questions about his alcohol use. He indicated that he told the intake staff member that he was not currently using alcohol. The facility therefore rejected him for its program because, since he was not currently using alcohol to excess, he did not meet the facility's admission criteria. Tr. at 57. He said that he attempted to show the DOE consultant psychologist's report to the intake person at the facility, but she refused to accept it both before and after his interview. Tr. at 90-91. With respect to his efforts to be admitted to the outpatient alcohol abuse program at this facility, prior to the hearing the individual submitted a July 3, 2007 statement from the facility indicating the following: "Based upon client's report, client does not meet clinical criteria for alcohol or drug treatment programs at [treatment center]." Individual's submission of July 16, 2007. <sup>2</sup>

With respect to the Criterion L concerns involving traffic offenses such as "no insurance certificate" and driving with "switched license plates," the individual admitted these infractions, but contended that this behavior, which took place between 1994 and 2002, is now well behind him. Tr. at 80, 89-90. The individual

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2/ Subsequent to the hearing, I received the facility's complete report regarding the individual submitted by the treatment facility itself. Submission of July 18, 2007. There is some discrepant information in this report. For example, it states that the individual's average use of alcohol is one to three beers, that there is an abstinence period of 8-12 months, although his last use is listed as within three months. I therefore find it not particularly convincing regarding whether the individual has a problem regarding use of alcohol. Moreover, since the DOE consultant psychologist and the DOE Counsel were not given the opportunity to review this material and comment on it, I do not believe it is entitled to any weight here.

also claims that the statement in the notification letter that he was charged with aggravated assault in 1999 does not appear in the records of the State in which it supposedly occurred. He claims that he did shoot someone, but was never charged. The individual submitted in this regard a letter from the State's district attorney, indicating that the state has no pending charges against this individual and handled only one charge against him, which was for issuing worthless checks. Individual's Hearing Exhibit A. Tr. at 87-90.

#### B. Individual's Two Church Friends and Intern

The church friends testified that they have known the individual for approximately three years. Tr. at 21, 29. One church friend sees the individual three or four times a week at church-related functions, and at musical or community gatherings. Tr. at 22. The other church friend sees the individual about twice a week at church functions. Tr. at 32. Neither witness had any significant contact with the individual under other circumstances, such as being inside the individual's home. Tr. at 25, 31. Both witnesses testified that they had never seen the individual use alcohol or illegal drugs. Tr. at 22, 30. The individual had explained to both witnesses that the subject of the security hearing was related to his use of alcohol. Tr. at 26, 31.

The intern testified that he has known the individual since February 2007. Tr. at 35. He and the individual are working together on a project at a local university. Tr. at 34. He stated that he gets together with the individual about three times a week in connection with internship issues. Tr. at 35. They do not socialize. Tr. at 36. He has never seen the individual use alcohol. Tr. at 39. The individual told him that the subject of the hearing was alcohol-related, although the individual did not relate to him any details about his previous alcohol use. Tr. at 36.

#### C. Supervisor

The individual's supervisor has known and supervised the individual for about two years, and characterizes him as a "good" employee. The supervisor has had no problems with the individual's performance. Tr. at 11-13. They have not socialized outside of work except at a few work-related functions. Tr. at 13. The supervisor has never seen the individual use alcohol. Tr. at 14. The individual told him originally that the subject of the hearing was his security clearance. Tr. at 16. He stated that the individual had notified him of the 2006 DUI within a couple of days after it occurred. Tr. at 17. The individual had also disclosed

an earlier DUI about two months before the hearing. Tr. at 19. The supervisor was not aware of the individual's illegal drug use or any concerns regarding the individual's falsifications or omissions. Tr. at 18.

#### D. The Individual's Wife

The individual's wife testified that she and the individual have known each other since January 2003, and have been married for three years. Tr. at 43. She has seen the individual use alcohol, but not to intoxication. The last time she saw him use alcohol was before April 2007. Tr. at 43. They have no alcohol in their home. Tr. at 45. She stated that after the individual's 2006 DUI, the individual continued to drink alcohol, but at a moderate level, about two or three beers. Tr. at 48. She believes that the individual has decided to abstain from alcohol because they are having a child soon, and he needs to be "responsible." Tr. at 44, 47, 49. She has never seen the individual use illegal drugs. Tr. at 49. She was aware that the subject of the hearing was alcohol use. She was not aware of his use of illegal drugs in the past, or that it was a concern at the hearing. She was not aware of the omission of information from his security forms. Tr. at 49-51.

#### E. The DOE Consultant Psychologist

After listening to the testimony of all the above witnesses, the DOE consultant psychologist summarized the information she provided in her evaluation letter, and provided an updated view of the concerns in this case, based on the testimony.

With respect to the individual's alcohol use, she believed that the individual had met several of the criteria for alcohol abuse set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV TR). She noted repeated use in physically hazardous conditions, i.e. driving while under the influence of alcohol. In this regard, she stated that the individual had been arrested three times for DUI, in 1982, 1994 and 2006. She also indicated that he had admitted to her that he had driven after using alcohol on other occasions when he was not arrested. Tr. at 103. She testified that the individual had met another criterion for alcohol abuse through his recurrent substance-related legal problems, including disorderly conduct arrests. Tr. at 104. Her conclusion was that since the alcohol-related episodes did not fall within a twelve-month period as specified in the DSM IV-TR, the individual did not precisely meet the formal requirements for alcohol abuse. Nevertheless, she believed he did meet them over "a lifetime." This led her to the conclusion that the individual

suffers from alcohol-related disorder not otherwise specified. Tr. at 104-05.

She further testified that at the time she evaluated the individual, he had an elevated gamma-glutamyl transferase (GGT) enzyme level, indicating liver dysfunction. She believed it was probable that this elevated GGT level was the result of chronic and acute use of alcohol around the time of the evaluation. See DOE Hearing Exhibit B. She testified that the nurse who drew blood for the individual's test reported "an odor of alcohol" emanating from the individual. Tr. at 106. She characterized his reported drinking of five to six beers while watching a game as binge drinking, i.e. having high levels of alcohol in a short period. Tr. at 108. She believed that the individual had been abstinent for the three-month period from April until the time of the hearing. However, she believed that the individual still needs some additional time in order to show rehabilitation from his alcohol problem. She testified that he should show 12 months of abstinence and some other treatment, such as AA and counseling. She believed that the individual should work with a psychologist who specializes in substance abuse disorders to develop a suitable program. Tr. at 111, 120. She further testified that due to the individual's excessive alcohol use, she continues to believe that he suffers from a mental condition that adversely affects his judgment and reliability. Tr. at 119.

With respect to the individual's use of illegal drugs, she pointed out that she noted in her report that she did not see a drug problem at the time of the evaluation. Tr. at 117. At the hearing, she testified that she still held that opinion. Tr. at 118.

The DOE consultant psychologist also testified about the individual's candor. She noted that the individual gave some discrepant information at the psychological interview and further that he was not particularly candid during the psychological tests that she administered. She gave as an example that the individual was probably underestimating his alcohol use during the interview. She based this opinion on the high GGT levels. Tr. at 123-24. She further believed that the individual's description of his reasons for requesting admission to the detox unit were not believable. Tr. at 125. She recommended that the individual seek psychotherapy in connection with his willingness to be candid. Tr. at 126-27.

### III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect

national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing* (VSO-0005), 24 DOE ¶ 82,753 (1995), *aff'd*, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

#### IV. Analysis

The issue in this case is whether the individual has mitigated the Criteria F, H, J, K, and L security concerns cited in the notification letter. As discussed below, I find that the individual has resolved the Criterion K concern, but has not resolved the other security concerns.

##### A. Criteria J, L and H

As indicated in the testimony above, the individual states that he has been abstinent from alcohol since approximately April 2007. As of the time of the hearing, this was a three-month period. His wife confirms this abstinence period, and the DOE consultant psychologist was inclined to believe it is true. While this is a start for a rehabilitation program, the individual clearly has further progress to make in order to resolve the security concerns here. As the DOE consultant psychologist indicated, the individual would still need a longer abstinence period, of about one year in total, as well as some additional treatment and a therapy program. Accordingly, I find that the Criterion J concern has not been resolved. For these



same reasons, I find that the Criterion H concern and the Criterion L concerns which also involve the individual's use of alcohol have also not been resolved. <sup>3</sup>

#### B. Criterion F

The individual has also not resolved the matter of the inconsistencies in his 2004 QNSP, his 2006 PSI and his statements to the DOE consultant psychologist regarding his alcohol use, and drug use, or his omission from his 2004 QNSP that he was admitted to a detox facility in 2001. His contention that he did not have to include the detox facility information because he never received or sought treatment is simply not plausible. I do not believe that he went to the detox facility just to get a good night's sleep.

In any event, question 21 of the QNSP asks whether in the previous seven years the individual has "consulted with a mental health professional, (such as a psychiatrist, psychologist or counselor) or consulted with a mental health care provider about a mental health related condition." As I stated above, the individual's contention that he did not have to reveal the 2001 consultation because he was intentionally lying about his situation in order to use the detox facility as a place to sleep is unbelievable. However, even if it were true, in order to be completely candid with the DOE, he should have revealed the admission to the detox facility on his QNSP and then provided an explanation of the circumstances. Thus, I find he deliberately omitted significant information from the QNSP.

In any event, I cannot accept his explanation, and find that overall the individual is currently not willing to be completely candid with the DOE. I find that he was not truthful on his QNSP regarding his stay at the detox facility, and not candid with me at the hearing about that stay. I am left with the distinct impression that this individual is still unwilling to be completely honest about matters that may be unflattering. I therefore find that the inconsistencies in the QNSP, the PSI and the psychological interview also continue to present a Criterion F concern.

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3/ The notification letter cited numerous Criterion L concerns that did not involve alcohol use. These concerns involved motor-vehicle violations including "switched license plates," driving without an insurance certificate, and no driver's license in possession. There was also a 1999 aggravated assault charge. I need not delve into these matters, given that the Criterion L concern related to alcohol use has, in any case, not been resolved.

#### Criterion K

I believe that the individual no longer uses illegal drugs. The individual so testified, and his wife corroborated this assertion. I believe that she would be aware if the individual used cocaine or crack cocaine. Moreover, the DOE consultant psychologist's report indicated that she saw no drug-related problems at the time she evaluated him in November 2006, and testified at the hearing that she still held that opinion. Tr. at 116-19. Accordingly, I find that the Criterion K concerns have been mitigated.

#### V. CONCLUSION

As the foregoing indicates, I find that the individual has resolved the Criterion K security concerns, but has not resolved the Criteria F, J, H, and L security concerns cited in the notification letter. It is therefore my decision that this individual should not be granted access authorization.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton  
Hearing Officer  
Office of Hearings and Appeals

Date: September 14, 2007